

RECEIVED

AUG 23 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 11 and 13)
of the Cable Television Consumer)
Protection and Competition Act of 1992)

MM Docket No. 92-264

Horizontal and Vertical Ownership)
Limits, Cross-Ownership Limitations)
and Anti-Trafficking Provisions)

TO: The Commission

COMMENTS OF BLACK ENTERTAINMENT TELEVISION, INC.

Black Entertainment Television, Inc. ("BET") hereby submits these Comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") in the captioned proceeding, released July 23, 1993 (FCC 93-332). We urge the Commission to adopt the broadcast attribution criteria (including the single majority shareholder rule) to determine whether a cable operator has an attributable interest in a programmer for purposes of the proposed channel occupancy limits. Additionally, the Commission should "allow carriage of additional vertically integrated video programmers provided such video programmers are minority-controlled or are targeted to a minority audience," as proposed in paragraph 170 of the FNPRM.

No. of Copies rec'd 049
List A B C D E

**I. THE CHANNEL OCCUPANCY LIMITS ARE INTENDED
TO INCREASE PROGRAM DIVERSITY**

One of the principal purposes of the channel occupancy limits is to "increase the diversity of sources of cable programming." FNPRM ¶168.^{1/} BET is a minority-controlled programming source that also provides programming targeted to a minority audience, and thus, cable carriage of BET furthers the purpose of these rules. The Commission also has recognized that "MSO investment has been essential to the creation of the most innovative and popular cable programming" such as BET and that "it is common for several MSOs to acquire minority interests in a new programming service in order to spread the risk associated with launching such services" FNPRM ¶201, n.196. Indeed, cable investment has been critical in establishing BET as a viable and valuable programming service. Adoption of channel occupancy rules that discourage carriage of BET solely because of MSO investment would disserve the very purpose for which the rules are being enacted. Moreover, allowing expanded carriage of minority-controlled or minority-oriented programming services such as BET will undoubtedly encourage additional minority ownership of programming services, thereby increasing the diversity of programming available on cable.

^{1/} The other stated purpose of the channel occupancy limits is to "reduce the incentive and ability of cable operators and other programmers to engage in anti-competitive practices." Id. Such practices are not a threat from minority programming sources, who lack the requisite market power to engage in anti-competitive behavior.

**II. THE BROADCAST ATTRIBUTION
CRITERIA SHOULD BE ADOPTED**

As the Commission has noted, the strict vertical integration attribution criteria adopted in connection with the program access provisions contained in Section 19 of the 1992 Cable Act are unnecessary in this context. The strict program access criteria "were intended to impose more narrowly tailored behavioral restraints, prohibiting [purported] anti-competitive conduct by vertically integrated cable operators and programmers." FNPRM at ¶198. The channel occupancy limits, however, "impose broader structural constraints, which affect the ability of all cable operators to carry programming in which they have a cognizable interest." Id. Consequently, as the Commission recognized, "a more flexible attribution standard is appropriate to encourage continued investment in the development of new programming services." Id.^{2/} The broadcast attribution criteria, including the single majority shareholder rule, should be adopted for this purpose, as proposed.

^{2/} In his Separate Statement, Commissioner Barrett recognized the importance of "incorporat[ing] sufficient flexibility to address the unique economic concerns of small operators and minority programmers in order to continue to foster a dynamic industry." He also recognized the importance of allocating "additional channel capacity to vertically integrated programming services that are minority-owned," in order to further the purposes of the 1992 Cable Act.

III. **A MINORITY PROGRAMMING
EXEMPTION SHOULD BE IMPLEMENTED**

The purposes of the Act and the channel occupancy limits are also furthered by the proposed exemption for minority programming and minority programmers. However, the definition of a "qualified minority programming source" provided in Section 9(c) of the Cable Act is too restrictive for this purpose.^{3/} Rather, as the Commission suggested, in order to further the Commission's purpose of encouraging both minority ownership and minority-oriented programming, a programming source that is either "minority-controlled" or provides programming "targeted to a minority audience" should qualify as a minority programming source for purposes of the channel occupancy limit exemption. See FNPRM ¶170.

CONCLUSION

Because Congress and the Commission have recognized that minority-oriented programming as well as minority-controlled programming sources provide a diversity of viewpoints and further the purposes of the Communications Act, the Commission should adopt the broadcast attribution standards (including the single

^{3/} In Section 9(c) of the 1992 Cable Act, a "qualified minority programming source" is defined as one "which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50% minority-owned." 47 U.S.C. § 532(i)(2) (emphasis added).

majority shareholder rule) to determine whether a programmer is "vertically integrated" for purposes of the channel occupancy limits. Additionally, the Commission should define a "qualified minority programming source" as one which provides minority-oriented programming or which is minority-controlled, and such programming sources should be exempt from the channel occupancy limits proposed in this proceeding. Such measures will further the development of minority programming sources and encourage (or at least permit) continued MSO investment in those programmers.

Respectfully submitted,

**BLACK ENTERTAINMENT
TELEVISION, INC.**

By: Maurita K. Coley (ms)
Maurita K. Coley
Vice President, Legal Affairs

By: David M. Silverman
David M. Silverman
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Ave., N.W.
Suite 200
Washington, D.C. 20006
(202) 659-9750

August 23, 1993